

1 HOUSE BILL NO. 196

2 INTRODUCED BY FISHER

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT COMBINING THE BOARD OF BARBERS WITH THE BOARD OF
6 COSMETOLOGISTS; ESTABLISHING THE COMPOSITION AND QUALIFICATION OF MEMBERS ON THE
7 COMBINED BOARD OF BARBERS AND COSMETOLOGISTS AND PROVIDING FOR 5-YEAR STAGGERED
8 TERMS FOR THE MEMBERS; SUBSTITUTING THE TERM "SALON OR SHOP" FOR "COSMETOLOGY
9 SALON" AND "BARBERSHOP"; PROVIDING A PURPOSE STATEMENT FOR BARBERING AND
10 COSMETOLOGY DISCIPLINES REGULATED UNDER TITLE 37, CHAPTER 31, MCA; REVISING
11 DEFINITIONS IN TITLE 37, CHAPTER 31, MCA, TO BE CONSISTENT WITH THE COMBINED BOARD;
12 EXPANDING RULEMAKING AUTHORITY TO PROVIDE FOR THE COMBINED BOARD; REVISING
13 PROHIBITED ACTS, LICENSING REQUIREMENTS, AND TEACHING LICENSE REQUIREMENTS TO
14 REFLECT THE COMBINED BOARD; REDUCING THE HOURS OF STUDY FOR A BARBER'S LICENSE FROM
15 2,000 HOURS TO 1,500 HOURS; PROVIDING RECIPROCITY FOR OUT-OF-STATE BARBERS; REVISING
16 SCHOOL CERTIFICATION AND INSPECTION REQUIREMENTS TO REFLECT THE COMBINED BOARD;
17 ALLOWING USE OF A THIRD PARTY TO PROVIDE EXAMINATION SERVICES; REVISING FEE
18 PROVISIONS AND LICENSE DENIAL, REVOCATION, AND SUSPENSION PROVISIONS TO REFLECT THE
19 COMBINED BOARD; MOVING ELECTROLOGY PROVISIONS FROM TITLE 37, CHAPTER 32, MCA, TO
20 TITLE 37, CHAPTER 31, MCA; AMENDING SECTIONS 2-15-1747, 15-30-256, 37-20-303, 37-31-101,
21 37-31-102, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311,
22 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-31-331, 39-51-204, 49-2-101, AND 50-61-103, MCA; AND
23 REPEALING SECTIONS 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303,
24 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404,
25 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423,
26 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201, 37-32-301, 37-32-302, 37-32-304,
27 37-32-305, 37-32-306, AND 37-32-311, MCA; ~~AND PROVIDING AN EFFECTIVE DATE.~~"

28

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

30

1 **Section 1.** Section 2-15-1747, MCA, is amended to read:

2 **"2-15-1747. Board of barbers and cosmetologists.** (1) There is a board of barbers and
3 cosmetologists.

4 (2) ~~(a)~~ The board consists of ~~seven~~ nine members appointed by the governor with the consent of the
5 senate and may must include:

6 ~~(i)~~(a) three licensed cosmetologists each of whom has been a resident of this state for a least 5 years
7 and has been actively engaged in the profession of cosmetology for at least 5 years IMMEDIATELY prior to being
8 appointed to the board;

9 (b) one member who has been a resident of this state for at least 5 years and who has been actively
10 engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years IMMEDIATELY prior to being
11 appointed to the board;

12 ~~(ii) one licensed manicurist or licensed electrologist;~~

13 ~~—— (iii) two persons who are members of or affiliated with a school of cosmetology; and~~

14 ~~—— (iv) one public member who is not engaged in the practice of cosmetology, electrology, or manicuring.~~

15 ~~(b) Members are appointed by the governor with the consent of the senate~~

16 (c) three licensed barbers each of whom has been a resident of this state for at least 5 years and has
17 been actively engaged in the profession of barbering for at least 5 years IMMEDIATELY prior to appointment to the
18 board; and

19 (d) two members of the public who are not engaged in the practice of barbering, cosmetology,
20 electrology, esthetics, or manicuring.

21 ~~(3) Each licensed member appointed shall have actively engaged in the profession of cosmetology,~~
22 ~~manicuring, or electrology for at least 5 years before his appointment and have been a resident of this state for~~
23 ~~at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate~~
24 ~~of a high school or its equivalent. No Not more than two cosmetologist members of the board may be members~~
25 ~~of or affiliated with a school of cosmetology, electrology, esthetics, or manicuring.~~

26 (4) (a) If there is not a licensed barber qualified and willing to serve on the board in one of the three
27 barber positions, the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise
28 qualified under this section to fill the position.

29 (b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three
30 cosmetologist positions, the governor may appoint a barber, electrologist, esthetician, or manicurist otherwise

1 qualified under this section to fill the position.

2 ~~(4)~~(5) Each member shall serve for a term of 4 5 years. The terms must be staggered.

3 ~~(5)~~(6) The board is allocated to the department for administrative purposes only as prescribed in
4 2-15-121."

5

6 **Section 2.** Section 15-30-256, MCA, is amended to read:

7 **"15-30-256. Employment defined and exclusions from definition of employment.** (1) As used in
8 this part "employment", subject to the provisions of subsection (2), means the service by an employee for an
9 employer.

10 (2) The term "employment" does not include:

11 (a) household and domestic service in a private home, local college club, or local chapter of a college
12 fraternity or sorority, except as provided in 15-30-201(4)(c);

13 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an
14 exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole
15 proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor
16 pursuant to 26 U.S.C. 7703;

17 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the
18 service, or a parent or guardian of the person performing the service in the case of a minor, has previously
19 acknowledged or acknowledges in writing that the person performing the service and the service are not covered
20 for unemployment insurance purposes. As used in this subsection:

21 (i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid
22 by the article or by the photograph; and

23 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
24 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the
25 employee's main duties, carries or delivers papers.

26 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

27 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, ~~or a~~
28 ~~barber who is licensed under Title 37, chapter 30;~~ and:

29 (i) who has acknowledged in writing that the cosmetologist or barber working under contract is not
30 covered by unemployment insurance and workers' compensation;

- 1 (ii) who contracts with a ~~cosmetology~~ salon or shop, as defined in 37-31-101, ~~or a barbershop, as~~
 2 ~~defined in 37-30-101~~, which contract must show that the cosmetologist or barber:
- 3 (A) is free from all control and direction of the owner in the contract;
- 4 (B) receives payment for service from individual clientele; and
- 5 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;
- 6 and
- 7 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The
 8 existence of a single license for the ~~cosmetology~~ salon or ~~barbershop~~ shop may not be construed as a lack of
 9 freedom from control or direction under this subsection.
- 10 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,
 11 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual
 12 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service
 13 is performed during at least 24 days in the same quarter.
- 14 (g) service performed by sole proprietors, working members of a partnership or a limited liability
 15 partnership, or members of a member-managed limited liability company that has filed articles of organization
 16 with the secretary of state;
- 17 (h) service performed for the installation of floor coverings if the installer:
- 18 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 19 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 20 (iii) may perform service for anyone without limitation;
- 21 (iv) may accept or reject any job;
- 22 (v) furnishes substantially all tools and equipment necessary to provide the service; and
- 23 (vi) works under a written contract that:
- 24 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
 25 obligations;
- 26 (B) states that the installer is not covered by unemployment insurance; and
- 27 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
 28 from workers' compensation requirements;
- 29 (i) service performed by a direct seller as defined by 26 U.S.C. 3508;
- 30 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land

1 professional" means a person who:

2 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
3 a business agreement for the exploration or development of minerals;

4 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than
5 on an hourly wage basis; and

6 (iii) performs all service as an independent contractor pursuant to a written contract.

7 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
8 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

9 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
10 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
11 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
12 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive
13 labor market;

14 (m) service performed as part of an unemployment work-relief or work-training program assisted or
15 financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by
16 an individual receiving work relief or work training;

17 (n) service performed by an inmate of a state prison or other state correctional or custodial institution;

18 (o) service by an individual who is sentenced to perform court-ordered community service or similar
19 work;

20 (p) service performed for aid or sustenance only;

21 (q) active service as members of the regular armed forces of the United States, as defined in 10 U.S.C.
22 101(33);

23 (r) agricultural labor; or

24 (s) service performed by an independent contractor."
25

26 **NEW SECTION. Section 3. Purpose.** It is a matter of legislative policy in the state of Montana that the
27 practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and
28 welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified
29 practice.
30

1 **Section 4.** Section 37-20-303, MCA, is amended to read:

2 **"37-20-303. Exemptions from approval requirement.** This chapter does not require the approval of
3 a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the
4 professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17; or 31; or
5 ~~32.~~"

6
7 **Section 5.** Section 37-31-101, MCA, is amended to read:

8 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
9 apply:

10 (1) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

11 (2) "Booth" means any part of a ~~cosmetology, manicuring, or esthetics~~ salon or shop that is rented or
12 leased for the performance of ~~cosmetologist, barbering, cosmetology, electrology, esthetics, or manicuring, or~~
13 ~~esthetics~~ services, as specified in 39-51-204(1)(e).

14 (3) ~~"Cosmetology salon" means the premises, a building, or a part of a building in which a branch or~~
15 ~~combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist~~
16 ~~is practiced by a person licensed under the provisions of this chapter.~~

17 (4)(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
18 17.

19 (4) (a) "Electrology" means the study of and the professional practice of permanently removing
20 superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle.
21 Electrology includes electrolysis and thermolysis. ELECTROLOGY MAY INCLUDE THE USE OF WAXES FOR EPILATION
22 AND THE USE OF CHEMICAL DEPILATORIES.

23 (b) Electrology does not include pilethermology, which is the study and professional practice of
24 removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

25 (5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

26 (6) "Esthetics" means skin care of the ~~face, neck, and hands~~ BODY, including but not limited to hot
27 compresses or the use of approved electrical appliances or chemical compounds formulated for professional
28 application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or
29 electrical apparatus or appliances on another person.

30 (7) ~~"Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics~~

1 ~~is practiced.~~

2 ~~(8)(7)~~ "Manicuring" includes ~~nail care of the hands and feet~~ CARE OF THE NAILS, THE HANDS, THE LOWER
3 ARMS, THE FEET, AND THE LOWER LEGS and the application and maintenance of artificial nails.

4 ~~(9)~~ "Manicuring salon" means ~~the premises, a building, or a part of a building in which the art of~~
5 ~~manicuring is practiced.~~

6 (8) "Practice or teaching of barbering" means any of the following practices performed for payment,
7 either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of
8 disease or physical or mental ailments:

9 (a) shaving or trimming a beard;

10 (b) cutting, styling, coloring, or waving hair;

11 (c) straightening hair by the use of chemicals;

12 (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations
13 applied by hand or mechanical appliance;

14 (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

15 (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands,
16 or neck.

17 ~~(10)(9)~~ (a) "Practice ~~and~~ or teaching of cosmetology" means work included in the terms "hairdressing",
18 "manicuring", "esthetics", and "beauty culture" and performed in ~~cosmetology~~ salons or shops, in booths, or by
19 itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair;
20 ~~scalp, face, arms, feet, or hands~~ AND BODY.

21 (b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists
22 who perform their services without compensation for demonstration purposes in any regularly established store
23 or place of business holding a license from the state of Montana as a store or place of business.

24 (10) "Salon or shop" means the physical location in which a person licensed under this chapter practices
25 barbering, cosmetology, electrology, esthetics, or manicuring.

26 (11) "School" means a program and location approved by the board with respect to its course of
27 instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets
28 any other criteria established by the board."

29

30 **Section 6.** Section 37-31-102, MCA, is amended to read:

1 **"37-31-102. Exemptions.** ~~Nothing in~~ The provisions of this chapter prohibits do not prohibit:

- 2 (1) service in case of emergency or domestic administration without compensation; or
 3 (2) services by persons authorized under the laws of this state to practice dentistry, the healing arts,
 4 or mortuary science; ~~or~~
 5 ~~(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their~~
 6 ~~vocation or in cutting women's hair."~~

7
 8 **Section 7.** Section 37-31-203, MCA, is amended to read:

9 **"37-31-203. Rulemaking powers.** The board shall prescribe rules for:

- 10 (1) the conduct of its business;
 11 (2) the qualification, examination, and registration of applicants to practice barbering, cosmetology,
 12 electrology, esthetics, or manicuring, or esthetics or to teach barbering, cosmetology, electrology, esthetics, or
 13 manicuring, or esthetics;
 14 ~~(3) the qualification and registration of applicants for manager-operator licenses;~~
 15 ~~(4)~~(3) the regulation and instruction of apprentices and students;
 16 ~~(5)~~(4) the conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring, and
 17 esthetics for apprentices and students;
 18 ~~(6)~~(5) the qualification and registration of applicants for booth rental licenses; and
 19 ~~(7)~~(6) generally the conduct of the persons, firms, or corporations affected by this chapter."

20
 21 **Section 8.** Section 37-31-301, MCA, is amended to read:

22 **"37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful
 23 to:

- 24 (a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;
 25 (b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or
 26 manicuring, or esthetics;
 27 (c) manage or operate a ~~cosmetology salon, manicuring salon, esthetics salon or shop;~~ or a booth; or
 28 (d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics;
 29 ~~_____ (e) practice manicuring for compensation;~~
 30 ~~_____ (f) practice as a finger waver; or~~

1 ~~_____ (g) practice esthetics for compensation.~~

2 (2) It is unlawful:

3 (a) for a person who owns, manages, or controls a ~~cosmetology~~ salon or shop to employ or use an
4 unlicensed person as a barber, cosmetologist, electrologist, esthetician, or a manicurist, ~~or an esthetician~~;

5 (b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring ~~school~~ without
6 complying with all of the regulations of 37-31-311;

7 (c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in
8 a licensed salon or shop as provided in this chapter, except when a ~~licensed operator license~~ license is requested:

9 (i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from
10 a licensed salon or shop; or

11 (ii) by a customer with a disability or homebound customer to go to the customer's place of residence;

12 or

13 ~~(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed~~
14 ~~person as a manicurist;~~

15 ~~_____ (e) for a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed~~
16 ~~person as an esthetician;~~

17 ~~_____ (f) to operate a manicuring school or a school of esthetics without complying with 37-31-311;~~

18 ~~(g)(d)~~ to violate any of the provisions of this chapter."
19

20 **Section 9.** Section 37-31-302, MCA, is amended to read:

21 **"37-31-302. License required to practice, teach, or operate salon or shop, booth, or school.** (1)

22 A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring, ~~or esthetics~~
23 without a license.

24 (2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology,
25 esthetics, or manicuring, ~~or esthetics~~ for compensation except under a certificate of registration as a school.

26 (3) A person may not operate or manage a ~~cosmetology~~ salon or shop, ~~a manicuring salon, or an~~
27 ~~esthetics salon or practice cosmetology, manicuring, or esthetics~~ without a license.

28 (4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or
29 manicuring, ~~or esthetics~~ or teach ~~the art of~~ barbering, cosmetology, electrology, esthetics, or manicuring, ~~or~~
30 ~~esthetics~~ without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring, ~~or esthetics~~.

1 (5) A person may not manage or operate a booth without a booth rental license.

2 (6) A person, firm, partnership, ~~or corporation, or other legal entity~~ desiring to operate a ~~cosmetology~~
3 salon or shop shall ~~make an application~~ apply to the department for a certificate of registration and license. The
4 application must be accompanied by the registration fee.

5 (7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."
6

7 **Section 10.** Section 37-31-303, MCA, is amended to read:

8 **"37-31-303. Application for license to practice or teach.** An applicant for a license to practice or
9 teach barbering, cosmetology, electrology, esthetics, or manicuring ~~or for a license to practice manicuring~~ must
10 shall qualify by filing file an application prescribed by the board and ~~by taking and passing pass~~
11 prescribed by the board in order to qualify for licensure. The license must be renewed ~~annually under in~~
12 accordance with the provisions of 37-31-322."
13

14 **Section 11.** Section 37-31-304, MCA, is amended to read:

15 **"37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice
16 barbering, the person shall obtain a license to practice barbering from the department. Before a person may
17 practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a
18 person may practice electrology, the person shall obtain a license to practice electrology from the department.
19 Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the
20 department unless the person is licensed to practice cosmetology. Before a person may practice esthetics, the
21 person shall obtain a license to practice esthetics from the department unless the person is already licensed to
22 practice cosmetology.

23 (2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18
24 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that
25 is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception
26 to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for
27 granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a
28 registered barbering school and must have received a diploma from the barbering school or must have
29 completed the course of study in barbering AT A SCHOOL OF COSMETOLOGY AUTHORIZED TO OFFER A COURSE OF
30 STUDY IN BARBERING prescribed by the board.

1 (b) A person qualified under subsection (2)(a) shall file a written application and deposit the application
 2 fee with the department and pass an examination as to fitness to practice barbering.

3 (C) THE BOARD SHALL ISSUE A LICENSE TO PRACTICE BARBERING, WITHOUT EXAMINATION, TO A PERSON
 4 LICENSED IN ANOTHER STATE IF THE BOARD DETERMINES THAT:

5 (I) THE OTHER STATE'S COURSE OF STUDY HOUR REQUIREMENT IS EQUAL TO OR GREATER THAN THE HOUR
 6 REQUIREMENT IN THIS STATE; AND

7 (II) THE PERSON'S LICENSE FROM THE OTHER STATE IS CURRENT AND THE PERSON IS NOT SUBJECT TO PENDING
 8 OR FINAL DISCIPLINARY ACTION FOR UNPROFESSIONAL CONDUCT OR IMPAIRMENT.

9 ~~(2)(3)~~ (a) To be eligible to take the examination to practice cosmetology, the applicant ~~may not be less~~
 10 ~~than~~ must be at least 18 years of age, must be of good moral character, and must possess a high school
 11 diploma or ~~the its~~ equivalent of a high school diploma that is recognized by the superintendent of public
 12 instruction. A person may apply to the board for an exception to the educational requirement of a high school
 13 diploma or ~~the its~~ equivalent of a high school diploma. The board shall adopt by rule procedures for granting an
 14 exception. The applicant must have completed a course of study of at least 2,000 hours in a registered
 15 cosmetology school and must have received a diploma from the cosmetology school or must have completed
 16 the course of study in cosmetology prescribed by the board.

17 (b) A person qualified under subsection ~~(2)(a)~~ (3)(a) shall file ~~with the department~~ a written application
 18 ~~to take the examination and shall deposit with the department~~ the required examination application fee with the
 19 department and pass an examination as to fitness to practice cosmetology.

20 (4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18
 21 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that
 22 is recognized by the superintendent of public instruction or a certificate of completion from a vocational-technical
 23 program. An applicant may apply to the board for an exception to the requirement of a high school diploma or
 24 its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule
 25 procedures for granting an exception. The applicant must have completed a course of education, training, and
 26 experience in the field of electrology as prescribed by the board by rule.

27 (b) A person qualified under subsection (4)(a) shall file a written application and deposit the required
 28 application fee with the department and pass an examination as to fitness to practice electrology.

29 ~~(3)(5)~~ (a) To be eligible to take the examination to practice manicuring, an applicant ~~may not be less~~
 30 ~~than~~ must be at least 18 years of age; must be of good moral character; and must possess a high school

1 diploma, ~~the or its~~ equivalent of a high school diploma that is recognized by the superintendent of public
 2 instruction, ~~or a certificate of completion from a vocational-technical program; and.~~ The applicant must have
 3 completed a course of study prescribed by the board in a registered school of cosmetology or a registered school
 4 of manicuring. A person may apply to the board for an exception to the educational requirement of a high school
 5 diploma, ~~the or its~~ equivalent of a high school diploma, or a certificate of completion from a vocational-technical
 6 program ~~certificate of completion~~. The board shall adopt by rule procedures for granting an exception.

7 (b) A person qualified under subsection ~~(3)(a)~~ (5)(a) shall file ~~with the department~~ a written application
 8 ~~to take the examination and deposit with the department the required examination application fee with the~~
 9 department and pass an examination as to fitness to practice manicuring.

10 ~~(4)(6)~~ (a) To be eligible to take the examination to practice esthetics, an applicant:

11 ~~—— (i) may not be under~~ must be at least 18 years of age; ~~;~~

12 ~~(ii) must be of good moral character; and~~

13 ~~(iii) must possess a high school diploma, the or its~~ equivalent of a high school diploma that is recognized
 14 by the superintendent of public instruction, ~~or a certificate of completion from a vocational-technical program;~~
 15 and.

16 ~~(iv) The applicant~~ must have completed a course of study prescribed by the board and consisting of not
 17 less than 650 hours of training and instruction in a registered school of cosmetology or a registered school of
 18 esthetics. A person may apply to the board for an exception to the educational requirement of a high school
 19 diploma, ~~the or its~~ equivalent of a high school diploma, or a certificate of completion from a vocational-technical
 20 program ~~certificate of completion~~. The board shall adopt by rule procedures for granting an exception.

21 (b) A person qualified under subsection ~~(4)(a)~~ (6)(a) shall:

22 ~~—— (i) file with the department a written application to take the examination;~~

23 ~~—— (ii) and deposit with the department the required examination application fee; with the department and~~

24 ~~—— (iii) pass an examination as to fitness to practice esthetics."~~

25

26 **Section 12.** Section 37-31-305, MCA, is amended to read:

27 **"37-31-305. Qualifications of applicants for license to teach.** (1) Before a person may teach
 28 manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics; or to teach
 29 cosmetology, the person shall obtain from the department a license to teach cosmetology.

30 (2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

1 (a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized
2 by the superintendent of public instruction; and

3 (b) (i) have a license to practice cosmetology issued by the department and have received a diploma
4 from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours
5 of student teacher training; or

6 (ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the
7 teacher's examination.

8 (3) Before a person may teach manicuring to a person seeking only to be licensed to practice
9 manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the
10 department to teach manicuring.

11 (4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

12 (a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the
13 superintendent of public instruction; and

14 (b) (i) have a license to practice manicuring or cosmetology issued by the department and have
15 received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion
16 of 650 hours of student teacher training; or

17 (ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately
18 before taking the teacher's examination.

19 (5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics,
20 the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach
21 esthetics.

22 (6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

23 (a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the
24 superintendent of public instruction; and

25 (b) (i) have a license to practice esthetics or cosmetology issued by the department and have received
26 a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650
27 hours of student teacher training; or

28 (ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately
29 before taking the teacher's examination.

30 (7) To be eligible to take an examination to obtain a license to teach barbering, a person must:

1 (a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the
 2 superintendent of public instruction; and

3 (b) (i) have a license to practice barbering issued by the department and have received a diploma from
 4 a registered school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student
 5 teacher training; or

6 (ii) have been actively engaged as a barber for 3 continuous years immediately before taking the
 7 teacher's examination.

8 (8) TO BE ELIGIBLE TO TAKE AN EXAMINATION FOR A LICENSE TO TEACH ELECTROLOGY, A PERSON MUST:

9 (A) BE A HIGH SCHOOL GRADUATE OR POSSESS AN EQUIVALENT OF A HIGH SCHOOL DIPLOMA RECOGNIZED BY
 10 THE SUPERINTENDENT OF PUBLIC INSTRUCTION;

11 (B) HAVE A 100-HOUR TEACHER CERTIFICATE; AND

12 (C) HAVE BEEN ACTIVELY ENGAGED AS AN ELECTROLOGIST FOR 3 CONTINUOUS YEARS IMMEDIATELY PRECEDING
 13 TAKING THE TEACHER'S EXAMINATION."

14

15 **Section 13.** Section 37-31-308, MCA, is amended to read:

16 **"37-31-308. Examination -- reexamination -- exemption for persons with disabilities.** (1)
 17 Examinations for a license to practice barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics
 18 or to teach barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics must be held at places and
 19 times specified by the board. ~~The examinations must be supervised by the board.~~ The examinations may not
 20 be confined to a specific method or system. The board may contract with an outside agency for examination and
 21 grading services. ~~The examinations must be conducted by persons who hold current licenses to practice in the~~
 22 ~~profession for which the applicant is being examined.~~

23 ~~— (2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply~~
 24 ~~to retake the examination:~~

25 ~~— (a) sooner than 6 months after the date of the second failure; or~~

26 ~~— (b) until the applicant has taken 200 hours additional training at a registered school of cosmetology~~
 27 ~~approved by the board.~~

28 ~~— (3) Anyone failing twice to pass the examination for a license to practice manicuring or a license to~~
 29 ~~practice esthetics shall meet the additional requirements prescribed by the board before applying to retake the~~
 30 ~~examination.~~

1 ~~_____ (4) Anyone failing twice to pass the examination for a license to teach cosmetology, manicuring, or~~
 2 ~~esthetics shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall~~
 3 ~~provide certification of completion of 500 hours of teacher training during that year in a registered school licensed~~
 4 ~~as a teacher training unit.~~

5 ~~(5)(2)~~ Persons with physical disabilities trained for barbering, cosmetology, electrology, esthetics, or
 6 ~~manicuring, or esthetics~~ by the department of public health and human services are, for a period of 1 year
 7 immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On
 8 certification from the department of public health and human services that a department of public health and
 9 human services beneficiary has successfully completed the required training in a school of barbering,
 10 cosmetology, electrology, esthetics, or a manicuring, or an esthetics school, the department shall issue the
 11 person the necessary certificate or license to practice the profession in this state."
 12

13 **Section 14.** Section 37-31-311, MCA, is amended to read:

14 **"37-31-311. Schools -- certificate of registration -- requirements -- bond -- curriculum.** (1) A
 15 person, firm, partnership, or corporation, or other legal entity may not operate a school for the purpose of
 16 teaching barbering, cosmetology, electrology, esthetics, or ~~manicuring, or esthetics~~ for compensation unless a
 17 certificate of registration has been first obtained from the department. Application for the certificate must be filed
 18 with the department on a form prescribed by the board.

19 (2) A school for teaching barbering may not be granted a certificate of registration unless it complies
 20 with or is able to comply with the following requirements:

21 (a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision
 22 of the work of the school or other teachers who the board determines are necessary for the proper conduct of
 23 the school. There may not be more than 25 students for each teacher.

24 (b) It possesses apparatus and equipment the board determines necessary for the teaching of all
 25 subjects or practices of barbering.

26 (c) It maintains a school term of not less than 1,500 hours and prescribes a course of practical training
 27 and technical instruction equal to the requirements for board examinations. The school's course of training and
 28 technical instruction must be prescribed by the board.

29 (d) It keeps a daily record of the attendance of each student, establishes grades, and holds
 30 examinations before issuing diplomas.

1 (e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
 2 would make the room unsanitary a room used wholly or in part for a school of barbering.

3 ~~(2)(3)~~ A school for teaching cosmetology may not be granted a certificate of registration unless it
 4 complies with or ~~can~~ is able to comply with the following requirements:

5 (a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision
 6 of the work of the school or other teachers who the board determines are necessary for the proper conduct of
 7 the school. There may not be more than 25 students ~~to~~ for each teacher.

8 (b) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~
 9 teaching of all subjects or practices of cosmetology.

10 (c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training
 11 and technical instruction equal to the requirements for board examinations; The school's ~~which~~ course of
 12 training and technical instruction must be prescribed by the board.

13 (d) It keeps a daily record of the attendance of each student, establishes grades, and holds
 14 examinations before issuing diplomas.

15 ~~An owner or person in charge of a school of cosmetology may~~ It does not permit a person to sleep
 16 in or use for residential purposes or for any other purpose that would make the room unsanitary a room used
 17 wholly or in part for a school of cosmetology.

18 (4) A school for teaching electrology may not be granted a certificate of registration unless it maintains
 19 a school term, prescribes a course of practical training and technical instruction, and possesses apparatus and
 20 equipment necessary for teaching electrology as prescribed by the board.

21 ~~(3)(5)~~ A school for teaching manicuring may not be granted a certificate of registration unless it complies
 22 with subsections ~~(2)(a)~~ (3)(a) and ~~(2)(d)~~ (3)(d) and the following requirements:

23 (a) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~
 24 teaching of all subjects or practices of manicuring.

25 (b) It maintains a school term and prescribes a course of practical training and technical instruction as
 26 prescribed by the board.

27 ~~An owner or person in charge of a school of manicuring may~~ It does not permit a person to sleep
 28 in or use for residential purposes or for any other purpose that would make the room unsanitary a room used
 29 wholly or in part for a school of manicuring.

30 ~~(4)(6)~~ A school for teaching esthetics may not be granted a certificate of registration unless it complies

1 with subsections ~~(2)(a)~~ (3)(a) and ~~(2)(d)~~ (3)(d) and the following requirements:

2 (a) It possesses apparatus and equipment the board determines necessary for the ready and full
3 teaching of all subjects or practices of esthetics.

4 (b) It maintains a school term and a course consisting of not less than 650 hours of practical training
5 and technical instruction as prescribed by the board.

6 (c) ~~An owner or person in charge of a school of esthetics may~~ It does not permit a person to sleep in
7 or use for residential purposes or for any other purpose that would make the room unsanitary a room used
8 wholly or in part for a school of esthetics.

9 ~~(5)(7)~~ Licenses or certificates of registration for schools of barbering, cosmetology, electrology,
10 esthetics, or manicuring, or esthetics may be refused, revoked, or suspended; as provided in 37-31-331.

11 ~~(6)(8)~~ A teacher or student teacher may not be permitted to practice barbering, cosmetology,
12 electrology, esthetics, or manicuring, or esthetics on the public in a school of barbering, cosmetology,
13 electrology, esthetics, or manicuring, or esthetics. A school that enrolls student teachers for a course of student
14 teacher training may not have, at any one time, more than one student teacher for each full-time licensed
15 teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

16 ~~(7)(9)~~ The board may make further rules necessary for the proper conduct of schools of barbering,
17 cosmetology, electrology, esthetics, and manicuring, and esthetics.

18 ~~(8)(10)~~ The board shall require the person, firm, partnership, ~~or~~ corporation, or other legal entity
19 operating a school of barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics to furnish a good
20 and sufficient bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board.

21 ~~(9)(11)~~ A professional ~~cosmetology, manicuring, or esthetics~~ salon or shop may not be operated in
22 connection with a school of barbering, cosmetology, electrology, esthetics, or ~~of manicuring, or of esthetics~~.

23 ~~(10)(12)~~ The board may, by rule, establish a suitable curriculum for teachers' training in registered
24 schools of barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics."

25

26 **Section 15.** Section 37-31-312, MCA, is amended to read:

27 "**37-31-312. Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall
28 devote time to inspecting ~~cosmetology~~ salons or shops and performing other duties as the department, in
29 cooperation with the board, may direct. The inspectors may enter a ~~cosmetology~~ salon, ~~manicuring~~ salon,
30 ~~esthetics~~ salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of

1 ~~esthetics, or school of manicuring, or school of esthetics~~ during business hours for the purpose of inspection,
 2 and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation
 3 of ~~the~~ a licensee's license or a school's certificate of registration.

4 (2) Upon application for a license, a ~~cosmetology, manicuring, or esthetics~~ salon or shop shall pay an
 5 initial inspection fee prescribed by the board.

6 (3) The board may authorize the department to grant to a ~~cosmetology, manicuring, or esthetics~~ salon
 7 or shop, upon payment of the initial inspection fee, a temporary permit authorizing the ~~cosmetology, manicuring,~~
 8 ~~or esthetics~~ salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make
 9 the inspection, whichever ~~event~~ occurs first. ~~This~~ A temporary permit is not renewable.

10 (4) The department shall ~~cause an~~ require the inspector or inspectors ~~inspector~~, appointed as provided
 11 in subsection (1), to conduct an annual inspection of each ~~cosmetology, manicuring, and esthetics~~ salon or shop
 12 in the state."

13

14 **Section 16.** Section 37-31-321, MCA, is amended to read:

15 **"37-31-321. Issuance of licenses and certificates.** If the board finds that an applicant for ~~examination~~
 16 licensure or for a certificate of registration has complied with the requirements of this chapter and has paid the
 17 required fee, the board shall admit ~~the~~ a licensee applicant to examination and shall authorize the department
 18 to issue a license or certificate of registration to those who have successfully passed the examination or who
 19 are entitled to ~~the~~ a certificate of registration under this chapter."

20

21 **Section 17.** Section 37-31-322, MCA, is amended to read:

22 **"37-31-322. Renewal -- ~~delinquency late renewal~~ fee.** (1) Licenses and certificates of registration may
 23 not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates of
 24 registration expire on the date set by department rule and may be renewed. Licenses and certificates of
 25 registration may be renewed by application made on or before the renewal date and by the payment of a
 26 required renewal fee. Expired licenses and certificates of registration may be renewed under rules made by the
 27 board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The
 28 renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and
 29 must be as set by the board.

30 (2) A late renewal fee prescribed by the board must be charged, in addition to other fees fixed by law,

1 for renewal applications of licenses and certificates of registration made after ~~December 31 of each year or other~~
 2 ~~predetermined renewal deadline~~ the renewal date."

3

4 **Section 18.** Section 37-31-323, MCA, is amended to read:

5 **"37-31-323. Fees.** (1) Fees for licenses and certificates of registration ~~shall~~ must be paid to the
 6 department in amounts prescribed by the board.

7 (2) The license and registration fees ~~shall~~ must be paid ~~annually, unless otherwise provided by board~~
 8 ~~rule,~~ in advance to the department unless otherwise provided by board rule.

9 (3) ~~No other~~ Other or additional license or registration ~~fee~~ fees may not be imposed by a municipal
 10 corporation or other political subdivision of this state for the practice or teaching of barbering, cosmetology,
 11 electrology, esthetics, or manicuring."

12

13 **Section 19.** Section 37-31-331, MCA, is amended to read:

14 **"37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing.** (1)
 15 The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the
 16 following cases:

17 (a) failure of a person, firm, partnership, ~~or~~ corporation, or other legal entity operating a ~~cosmetology~~
 18 ~~salon, manicuring salon, esthetics salon or shop,~~ or a school of barbering, cosmetology, electrology, esthetics,
 19 or manicuring, ~~or esthetics~~ to comply with this chapter;

20 (b) failure to comply with the sanitary rules adopted by the board and approved by the department of
 21 public health and human services for the regulation of ~~cosmetology salons or shops; manicuring salons;~~
 22 ~~esthetics salons;~~ or schools of barbering, cosmetology, electrology, esthetics, or manicuring, ~~or esthetics;~~

23 (c) gross malpractice;

24 (d) continued practice by a person who knowingly has an infectious or contagious disease;

25 (e) habitual drunkenness or habitual addiction to the use of ~~morphine~~ ~~or~~ any habit-forming drug;

26 (f) permitting a certificate of registration or license to be used when the holder is not personally, actively,
 27 and continuously engaged in business; or

28 (g) failure to display the license.

29 (2) The board may not refuse to authorize the department to issue or renew a license or to revoke or
 30 suspend a license already issued until after notice and opportunity for a hearing."

1

2 **Section 20.** Section 39-51-204, MCA, is amended to read:

3 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

4 (a) domestic or household service in a private home, local college club, or local chapter of a college
5 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and
6 has domestic or household service employment, all employees engaged in domestic or household service must
7 be excluded from coverage under this chapter if the employer:

8 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
9 subject wages attributable to domestic or household service; and

10 (ii) keeps separate books and records to account for the employment of persons in domestic or
11 household service.

12 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be
13 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based
14 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

15 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the
16 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged
17 in writing that the person performing the service and the service are not covered. As used in this subsection:

18 (i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid
19 by the article or by the photograph; and

20 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
21 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the
22 employee's main duties, carries or delivers papers.

23 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance
24 salespeople paid solely by commission and without a guarantee of minimum earnings;

25 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, ~~or a~~
26 ~~barber who is licensed under Title 37, chapter 30;~~ and:

27 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment
28 insurance and workers' compensation;

29 (ii) who contracts with a ~~cosmetology~~ salon or shop, as defined in 37-31-101, ~~or a barbershop, as~~
30 ~~defined in 37-30-101, which~~ and the contract must show that the cosmetologist or barber:

- 1 (A) is free from all control and direction of the owner in the contract;
- 2 (B) receives payment for service from individual clientele; and
- 3 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;
- 4 and
- 5 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The
- 6 existence of a single license for the ~~cosmetology~~ salon or ~~shop~~ ~~barbershop~~ may not be construed as a lack of
- 7 freedom from control or direction under this subsection.
- 8 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,
- 9 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual
- 10 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service
- 11 is performed during at least 24 days in the same quarter.
- 12 (g) service performed by sole proprietors, working members of a partnership, members of a
- 13 member-managed limited liability company that has filed with the secretary of state, or partners in a limited
- 14 liability partnership that has filed with the secretary of state;
- 15 (h) service performed for the installation of floor coverings if the installer:
- 16 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 17 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 18 (iii) may perform service for anyone without limitation;
- 19 (iv) may accept or reject any job;
- 20 (v) furnishes substantially all tools and equipment necessary to provide the service; and
- 21 (vi) works under a written contract that:
- 22 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
- 23 obligations;
- 24 (B) states that the installer is not covered by unemployment insurance; and
- 25 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
- 26 from workers' compensation requirements;
- 27 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;
- 28 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 29 professional" means a person who:
- 30 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating

- 1 a business agreement for the exploration or development of minerals;
- 2 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than
3 on an hourly wage basis; and
- 4 (iii) performs all services as an independent contractor pursuant to a written contract.
- 5 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
6 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 7 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
8 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is
9 impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who,
10 because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;
- 11 (m) service performed as part of an unemployment work-relief or work-training program assisted or
12 financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an
13 Indian tribe by an individual receiving work relief or work training;
- 14 (n) service performed for a state prison or other state correctional or custodial institution by an inmate
15 of that institution;
- 16 (o) service performed by an individual who is sentenced to perform court-ordered community service
17 or similar work;
- 18 (p) service performed by elected public officials;
- 19 (q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject
20 to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
21 from coverage under this chapter if the employer:
- 22 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
23 monetary amount or number of employees and days worked for the subject wages attributable to agricultural
24 labor; and
- 25 (ii) keeps separate books and records to account for the employment of persons in agricultural labor.
- 26 (r) service performed in the employ of any other state or its political subdivisions or of the United States
27 government or of an instrumentality of any other state or states or their political subdivisions or of the United
28 States, except that national banks organized under the national banking law are not entitled to exemption under
29 this subsection and are subject to this chapter the same as state banks, if the service is excluded from
30 employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

1 (s) service in which unemployment insurance is payable under an unemployment insurance system
2 established by an act of congress if the department enters into agreements with the proper agencies under an
3 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative
4 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring
5 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of
6 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,
7 acquired rights to benefits under this chapter;

8 (t) service performed in the employ of a school or university if the service is performed by a student who
9 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse
10 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse
11 to perform the service is provided under a program to provide financial assistance to the student by the school
12 or university and that the employment is not covered by any program of unemployment insurance;

13 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that
14 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in
15 attendance at the place where its educational activities are carried on, as a student in a full-time program taken
16 for credit at an institution that combines academic instruction with work experience if the service is an integral
17 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)
18 does not apply to service performed in a program established for or on behalf of an employer or group of
19 employers;

20 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the
21 United States;

22 (w) service performed by an alien admitted to the United States to perform agricultural labor pursuant
23 to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; or

24 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for
25 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

26 (2) An individual found to be an independent contractor by the department under the terms of
27 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
28 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

29 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or
30 a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is

1 excluded from employment for purposes of the Federal Unemployment Tax Act."

2

3 **Section 21.** Section 49-2-101, MCA, is amended to read:

4 **"49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following
5 definitions apply:

6 (1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle
7 responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for
8 discrimination without reference to age.

9 (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as
10 distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by
11 a violation of this chapter.

12 (3) "Commission" means the commission for human rights provided for in 2-15-1706.

13 (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

14 (5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt
15 and defer its payment, or to purchase property or services and defer payment. It includes without limitation the
16 right to incur and defer debt that is secured by residential real property.

17 (6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit,
18 or credit sale.

19 (7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the
20 extension of credit for which the payment of a financial charge or interest is required, whether in connection with
21 loans, sale of property or services, or otherwise.

22 (8) "Department" means the department of labor and industry provided for in 2-15-1701.

23 (9) "Educational institution" means a public or private institution and includes an academy; college;
24 elementary or secondary school; extension course; kindergarten; nursery; school system; university; business,
25 nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

26 (10) "Employee" means an individual employed by an employer.

27 (11) "Employer" means an employer of one or more persons or an agent of the employer but does not
28 include a fraternal, charitable, or religious association or corporation if the association or corporation is not
29 organized either for private profit or to provide accommodations or services that are available on a
30 nonmembership basis.

1 (12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

2 (13) "Financial institution" means a commercial bank, trust company, savings bank, finance company,
3 savings and loan association, credit union, investment company, or insurance company.

4 (14) "Housing accommodation" means a building or portion of a building, whether constructed or to be
5 constructed, that is or will be used as the sleeping quarters of its occupants.

6 (15) "Labor organization" means an organization or an agent of an organization organized for the
7 purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms
8 or conditions of employment, or of other mutual aid and protection of employees.

9 (16) "National origin" means ancestry.

10 (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that
11 engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

12 (b) The term does not include a labor organization.

13 (18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations,
14 legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations,
15 employers, employment agencies, organizations, or labor organizations.

16 (19) (a) "Physical or mental disability" means:

17 (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

18 (ii) a record of such an impairment; or

19 (iii) a condition regarded as such an impairment.

20 (b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental
21 disability includes the failure to make reasonable accommodations that are required by an otherwise qualified
22 person who has a physical or mental disability. An accommodation that would require an undue hardship or that
23 would endanger the health or safety of any person is not a reasonable accommodation.

24 (20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to
25 the general public subject only to the conditions and limitations established by law and applicable to all persons.

26 It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or
27 alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern,
28 nightclub, trailer park, resort, campground, ~~barbershop, beauty parlor~~ barbering, cosmetology, electrology,
29 esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course,
30 cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business

1 establishments.

2 (b) Public accommodation does not include an institution, club, or place of accommodation that proves
3 that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered
4 by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly
5 receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly,
6 from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection
7 (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private."

8

9 **Section 22.** Section 50-61-103, MCA, is amended to read:

10 **"50-61-103. Application of chapter -- definitions.** This chapter applies to the occupancies defined
11 below:

12 (1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof
13 of a building or structure by a gathering of persons for civic, political, travel, religious, social, or recreational
14 purposes, including among others:

15 (a) armories;

16 (b) assembly halls;

17 (c) auditoriums;

18 (d) bowling alleys;

19 (e) broadcasting studios;

20 (f) chapels;

21 (g) churches;

22 (h) club rooms;

23 (i) dance halls;

24 (j) exhibition rooms;

25 (k) gymnasiums;

26 (l) lecture halls;

27 (m) lodge rooms;

28 (n) motion picture theaters;

29 (o) museums;

30 (p) night clubs;

- 1 (q) opera houses;
- 2 (r) passenger stations;
- 3 (s) pool rooms;
- 4 (t) recreation areas;
- 5 (u) restaurants;
- 6 (v) skating rinks;
- 7 (w) television studios;
- 8 (x) theaters; and
- 9 (y) taverns.
- 10 (2) "Business occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~
- 11 of a building or structure for the transaction of business or the rendering or receiving of professional services,
- 12 including among others:
- 13 (a) banks;
- 14 (b) ~~barbershops~~ barbering, cosmetology, electrology, esthetics, or manicuring salons or shops;
- 15 ~~(c) beauty parlors;~~
- 16 ~~(d)~~(c) office buildings;
- 17 ~~(e)~~(d) radio stations;
- 18 ~~(f)~~(e) telephone exchanges; and
- 19 ~~(g)~~(f) television stations.
- 20 (3) "Educational occupancy" means the occupancy or use of a building or structure or any portion
- 21 ~~thereof~~ of a building or structure by persons assembled for the purpose of learning or receiving educational
- 22 instruction, including among others:
- 23 (a) academies;
- 24 (b) colleges;
- 25 (c) libraries;
- 26 (d) schools; and
- 27 (e) universities.
- 28 (4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~
- 29 of a building or structure for assembling, fabricating, finishing, manufacturing, packaging, or processing
- 30 operations, including among others:

- 1 (a) assembly plants;
- 2 (b) creameries;
- 3 (c) electric substations;
- 4 (d) factories;
- 5 (e) ice plants;
- 6 (f) laboratories;
- 7 (g) laundries;
- 8 (h) manufacturing plants;
- 9 (i) mills;
- 10 (j) power plants;
- 11 (k) processing plants;
- 12 (l) pumping stations;
- 13 (m) repair garages;
- 14 (n) smokehouses; and
- 15 (o) workshops.

16 (5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion
17 ~~thereof~~ of a building or structure by persons harbored or detained to receive medical, charitable, or other care
18 or treatment or by persons involuntarily detained, including among others:

- 19 (a) ~~asylums~~ mental health facilities;
- 20 (b) homes for the aged;
- 21 (c) hospitals;
- 22 (d) ~~houses of correction~~ correctional facilities;
- 23 (e) day-care facilities;
- 24 (f) infirmaries;
- 25 (g) jails;
- 26 (h) nurseries;
- 27 (i) orphanages;
- 28 (j) nursing homes;
- 29 (k) penal institutions;
- 30 (l) reformatories;

- 1 (m) sanitariums;
2 (n) long-term care facilities; and
3 (o) boarding homes.
4 (6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof
5 of a building or structure by persons for whom sleeping accommodations are provided and who are not harbored
6 or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including
7 among others (but not including single-family private houses):
8 (a) apartments;
9 (b) clubhouses;
10 (c) convents;
11 (d) dormitories;
12 (e) dwellings;
13 (f) hotels;
14 (g) motels;
15 (h) multifamily houses; and
16 (i) lodging houses."
17

18 NEW SECTION. Section 23. Repealer. Sections 2-15-1746, 37-30-101, 37-30-201, 37-30-202,
19 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401,
20 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413,
21 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201,
22 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, and 37-32-311, MCA, are repealed.
23

24 NEW SECTION. Section 24. Codification instruction. [Section 3] is intended to be codified as an
25 integral part of Title 37, chapter 31, part 1, and the provisions of Title 37, chapter 31, part 1, apply to [section 3].
26

27 NEW SECTION. Section 25. Severability. If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
29 the part remains in effect in all valid applications that are severable from the invalid applications.
30

1 ~~NEW SECTION. Section 26. Effective date. [This act] is effective July 1, 2003.~~

2 - END -